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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 583

D. B. ANDERS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

REPLY BRIEF BY PETITIONER TO THE BRIEF FOR THE RESPONDENT IN OPPOSITION

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The opinion of the Court of Appeals for the Tenth Circuit is reported at 414 F.2d 1283. The revised opinion, denying the petitioner's petition for rehearing is reported immediately following that opinion at 414 F.2d 1289.

This reply brief is limited to one item of new matter raised by the brief for the respondent in opposition, which new matter is totally incorrect.

The brief for the respondent in opposition reflects respondent's continuing failure here, as in the court below, to observe his duty to inform the court clearly and concisely of the legal issues in this case.

The following statement in brief for respondent is false:

> ". . . Moreover, the parties agree that the rental items were not stock in trade or property includible in inventory or held for sale to customers, within the meaning of Section 337(b)(1)(A) of the 1954 Code." (Pet. A 20).

This sentence appeared in the original opinion of the United States Court of Appeals, Tenth Circuit. Petitioner's Petition for Rehearing pointed out to the court that such statement was *not true* because petitioner had always contended in the alternative that if the rental items were not *property*, then they *were* stock in trade or inventory, and because they were sold to one person in one transaction, the gain was not recognized under Internal Revenue Code, Section 337(b)(2). See Petition for Rehearing. See also Petition for Certiorari, p. 11.

In its Order Denying Petition for Rehearing the Tenth Circuit expressly withdrew from its opinion the statement cited by respondent above. (Pet. A 31). Respondent's repetition of such statement in its brief is therefore totally incorrect.

CONCLUSION

For the reasons stated in the Petition for Certiorari, which are hereby reaffirmed, the petition should be granted. It is submitted that the brief for the respondent in opposi-

tion is based upon untenable grounds and does not state any cogent or valid reason why the petition should be denied.

Respectfully submitted,

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